



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 04-79
April 16, 2014

SUSTAINABLE ACQUISITION

PURPOSE: This Procurement Notice (PN) revises the NASA FAR Supplement (NFS) to implement the sustainable acquisition requirements of Executive Order 13514, "Federal Leadership in Environmental, Energy, and Economic Performance," and Executive Order 13423, "Strengthening Federal Environmental, Energy, and Transportation Management" as further implemented through FAR Subpart 23.1—Sustainable Acquisition Policy.

BACKGROUND: FAR Part 23 was revised to implement Executive Orders 13514 and 13423, which required Federal agencies to advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) require one or more of the sustainable attributes—

- (1) Energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP)-designated);
- (2) Water-efficient;
- (3) Biobased;
- (4) Environmentally preferable (e.g., EPEAT-registered, or non-toxic or less toxic alternatives);
- (5) Non-ozone depleting; or
- (6) Made with recovered materials.

This policy applies to contract actions including the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars. It also applies to new task and delivery orders on existing contracts and to purchases below the micro-purchase threshold. It includes items delivered to the Government during performance, acquired by the contractor for use in performing services at a Federally-controlled facility, or furnished by the contractor for use by the Government.

In 2010, Federal Procurement Data System (FPDS) was revised to enable contracting officers to record sustainability-related data. This data will be used to measure progress in support of the 95% sustainability goal and for Agency reporting for the Office of Management and Budget's "Green Scorecard" on sustainability as well as annual the Agency's Strategic Sustainability Performance Plan.

The policy changes to Part 1823 are as follows:

Adds subpart 1823.1, Sustainable Acquisition Policy, to establish procedures for implementing sustainable acquisition in NASA procurements, requires the use of NASA Form 1707 by the request originator to indicate which sustainable attributes apply in a given contract action, and adds the requirement for the contracting officer to accurately report sustainable acquisition clauses in FPDS.

ACQUISITIONS AFFECTED BY CHANGES: This requirement is applicable to all acquisitions.

ACTION REQUIRED BY CONTRACTING OFFICERS: Using the procedures established in this revision to NFS 1823, contracting officers shall screen every acquisition to determine if any sustainable acquisition applies. If one or more program applies, then the contracting officer shall include the appropriate FAR Part 23 clauses in the acquisition and record the use of those clauses in FPDS reporting.

CLAUSE CHANGES: None.

PARTS AFFECTED: Part 1823.

TYPE OF RULE AND PUBLICATION DATE: These changes do not have a significant effect beyond the internal operating procedures of NASA and do not have a significant cost or administrative impact on contractors or offerors, and therefore do not require codification in the Code of Federal Regulations (CFR) or publication for public comment.

HEADQUARTERS CONTACT: Marilyn E. Chambers, Contract Management Division; 202-358-5154, email: marilyn.chambers@nasa.gov.

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William P. McNally
Assistant Administrator for Procurement

Enclosures

PART 1823
ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY
TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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PART 1823
ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY
TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE
Subpart 1823.1—Sustainable Acquisition Policy

1823.103 Sustainable acquisitions.

(a) In order to meet the 95% sustainable acquisition goal, set forth in FAR 23.103(a), every NASA procurement must be screened for the applicability of the Federal environmental programs listed in this Part. This screening starts with the request originator, particularly for direct purchases of supplies. For service contracts and more complex acquisitions, this screening may be performed by the acquisition planning team. Request originators or the acquisition planning team, as appropriate, are also responsible for ensuring their procurement requirements comply with their center or facility's environmental management system as prescribed in NPR 8553.1, NASA Environmental Management System.

1823.103-70 Screening Procurement Requirements.

NASA Form (NF) 1707, Special Approvals and Affirmations for Requisitions, Section 2, requires request originators to review the Federal environmental programs and document if they apply to the procurement, if they will be met, or if a waiver is provided. As specified in NPR 8530.1, Affirmative Procurement Program and Plan for Environmentally Preferable Products, the center environmental organization is also available to provide support to both the CO and request originator on the applicability of environmental programs. Using the NF 1707 as a guide, COs shall screen procurement requirements to 1) determine if any of the environmental programs apply, 2) place the appropriate FAR provisions and clauses in solicitations and contracts, and 3) accurately record sustainable acquisition activity in the Federal Procurement Data System (FPDS).

1823.103-72 Sustainable Acquisition Reporting.

The Recovered Materials/Sustainability FPDS Data Element Choices must be thoughtfully and properly reviewed and selected so that there is adequate data to gauge the progress and performance in the various environmental programs. The data in FPDS will be used to determine if NASA is meeting the 95% goal. Centers are encouraged to use this data to measure their progress and to make any corrections necessary to improve performance. The FPDS data will be used for semiannual reports to the Office of Management and Budget (OMB) on NASA's sustainable acquisition performance.

Subpart 1823.2--Energy and Water Efficiency and Renewable Energy

1823.202 Policy.

NPR 8570.1, Energy Efficiency and Water Conservation, provides procedural requirements and assigns responsibility for evaluating and implementing cost-effective energy efficiency, renewable energy, and water conservation measures in NASA facilities and operations. Both these NASA requirements and Federal environmental programs apply to the direct purchase of energy-or water-using products, e.g., appliances, computers, faucets, and to contracts where these products will be used by the contractor in performance of the contract, such as facilities operations and maintenance (O&M) and construction contracts.

1823.204 Procurement exemptions.

The center or component facility energy manager is delegated authority to make the exemption determination at FAR 23.204.

1823.270 Federal fleet and transportation efficiency.

Responsibility, policy and procedures for NASA's implementation of Executive Order 13149, "Greening the Government through Federal Fleet and Transportation Efficiency", including cost-

effectiveness, are described in NPR 6200.1, "NASA Transportation and General Traffic Management."

1823.271 NASA Solicitation provision and contract clause.

Insert the clause at 1852.223-76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

Subpart 1823.4--Use of Recovered Materials

1823.404 Agency affirmative procurement programs.

NASA's affirmative procurement program is described in the Affirmative Procurement Plan for Environmentally Preferable Products (NPR 8530.1).

Subpart 1823.5--Drug-Free Workplace

1823.570 Drug-and alcohol-free workforce.

This section sets forth NASA requirements for mandatory drug and alcohol testing of certain contractor personnel under section 203, National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2473, 72 Stat. 429; and Civil Space Employee Testing Act of 1991, Public Law 102-195, sec. 21, 105 Stat. 1616 to 1619.

1823.570-1 Definitions.

As used in this subpart **employee** and **controlled substance** are as defined in [FAR 23.503](#). The use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law shall not be subject to the requirements of 1823.570 to 1823.570-3 and the clause at [1852.223-74](#).

"Employee in a sensitive position" means a contractor or subcontractor employee who has been granted access to classified information; a contractor or subcontractor employee in other positions that the contractor or subcontractor determines could reasonably be expected to affect safety, security, National security, or functions other than the foregoing requiring a high degree of trust and confidence; and includes any employee performing in a position designated "mission critical" pursuant to the clause at [1852.246-70](#). The term also includes any applicant who is interviewed for a position described in this paragraph.

"Use, in violation of applicable law or Federal regulation, of alcohol" includes having, while on duty or during a preemployment interview, an alcohol concentration of 0.04 percent by weight or more in the blood, as measured by chemical test of the individual's breath or blood. An individual's refusal to submit to such test is presumptive evidence of use, in violation of applicable law or Federal regulation, of alcohol.

1823.570-2 Contract clause.

The contracting officer shall insert the clause at 1852.223-74, "Drug- and Alcohol-Free Workforce," in all solicitations and contracts containing the clause at 1852.246-70, "Mission Critical Space Systems Personnel Reliability Program," and in other solicitations and contracts exceeding \$5 million in which work is performed by an employee in a sensitive position. However, the contracting officer shall not insert the clause at 1852.223-74 in solicitations and contracts for commercial items (see [FAR Parts 2](#) and [12](#)).

1823.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

The contracting officer shall comply with the procedures of [FAR 23.506](#) regarding the suspension of contract payments, the termination of the contract for default, and debarment and suspension of a contractor relative to failure to comply with the clause at [1852.223-74](#). Causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are the following:

(a) The contractor fails to comply with paragraph (b), (c), or (d) of the clause at 1852.223-74; or

(b) Such a number of contractor employees in sensitive positions having been convicted of violations of criminal drug statutes or substantial evidence of drug or alcohol abuse or misuse occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug- and alcohol-free workforce.

Subpart 1823.7--Contracting for Environmentally Preferable Products and Services

1823.703 Policy.

Responsibility, policy and procedures for NASA's implementation of [FAR 23.703](#) is described in the following directives:

- (i) NPR 1800.1, NASA Occupational Health Program Procedures
- (ii) NPD 8500.1, NASA Environmental Management;
- (iii) NPR 8510.1, NASA Cultural Resources Management;
- (iv) NPR 8530.1, Affirmative Procurement Program and Plan for Environmentally Preferable Products;
- (v) NPR 8553.1, NASA Environmental Management System;
- (vi) NPR 8570.1, Energy Efficiency and Water Conservation;
- (vii) NPR 8580.1, NASA National Environmental Policy Act Management Requirements; and
- (viii) NPR 8590.1A, Environmental Compliance and Restoration Program.

1823.704 Electronic products environmental assessment tool.

(c) Exceptions to FAR 23.704(a) may be granted by the NASA Chief Information Officer (CIO).

Subpart 1823.10--Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

1823.1005 Contract clause.

- (b) Use the clause with its Alternate I if the contract provides for contractor –
- (1) Operation or maintenance of a NASA facility at which NASA has implemented or plans to implement an EMS, including, but not limited to the Jet Propulsion Laboratory and Michoud Assembly Facility; or
 - (2) Activities and operations –
 - (ii) The contracting officer and the procurement request initiator shall determine whether the contractor's activities or operations are covered within the EMS, in cooperation with the facility's environmental office, and in accordance with NPR 8553.1, "NASA Environmental Management System (EMS)" paragraph 1.2.c, and the local EMS documented procedures.
- (c) Use the clause with its Alternate II whenever Alternate I is used.

Subpart 1823.70--Safety and Health

1823.7001 NASA solicitation provisions and contract clauses.

(a) The clause at [1852.223-70](#), Safety and Health, shall be included in all solicitations and contracts when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(b) The clause prescribed in paragraph (a) of this section may be excluded, regardless of place of performance, when the contracting officer, with the approval of the installation official(s) responsible for matters of safety and occupational health, determines that the application of OSHA and DOT regulations constitutes adequate safety and occupational health protection.

(c) The contracting officer shall insert the provision at [1852.223-73](#), Safety and Health Plan, in solicitations containing the clause at 1852.223-70. This provision may be modified to identify specific information that is to be included in the plan. After receiving the concurrence of the center safety and occupational health official(s), the contracting officer shall include the plan in any resulting contract. Insert the provision with its Alternate I, in Invitations for Bid containing the clause at 1852.223-70.

(d)(1) The contracting officer shall insert the clause at [1852.223-75](#), Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if –

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at [FAR 52.249-5](#); or

(ii) The solicitation or contract is for commercial items and contains the clause at [FAR 52.212-4](#).

(3) For contracts with estimated values below \$500,000, use of the clause is optional.

(e) For all solicitations and contracts exceeding the micro-purchase threshold that do not include the clause at [1852.223-70](#), Safety and Health, the contracting officer shall insert the clause at [1852.223-72](#), Safety and Health (Short Form).

Subpart 1823.71--Frequency Authorization

1823.7101 Contract clause.

The contracting officer shall insert the clause at [1852.223-71](#), Frequency Authorization, in solicitations and contracts calling for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required.

1823.7102 Procedures.

The contracting officer shall obtain the necessary frequency authorization and other procedural details from the installation's spectrum manager.